IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 19143 of 1997

Between:

K.Pochaiah, S/o. Narsaiah,
Kamareddy Town, Nizamabad Dist.

..... PETITIONER

AND

1. The Superintending Engineer,Operation,

A.P.State Electricity Board, Nizamabad.
2. The Divisional Engineer,Electrical, A.P.State Electricity

Board,Operation Construction Division,
Kamareddy, Nizamabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or Writs, order or direction, declaring the action of the first respondent in not fixing the seniority of the petitioner in the interse seniority list of Line Inspectors of Nizamabad Circle to effect promotion of the petitioner to the post of Senior Line Inspector and further promotions, as illegal and arbitrary, by directing the Respondents to forthwith fix the seniority of the petitioner, in the interse seniority list of Line Inspectors of Nizamabad Circle, by giving his due placement pursuant to the proceedings dated 25.09.1996 issued in Memo. No. DEE: O&C: KMR:ADM:E2:D.NO.2568/96 on the file of the 2nd respondent; Award costs.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents: SC FOR A.P.S.E.B.

The Court made the following:

ORDER:

Heard Sri K.Raghuveer Reddy, learned counsel appearing for the petitioner and also Sri S. Ravindranath, learned standing counsel appearing on behalf of the respondents 1 and 2.

The petitioner who is appointed as Helper at the relevant point of time and promoted as Telephone Inspector files this Writ Petition, *inter alia,* seeking for a Mandamus declaring the action of first respondent in not fixing his seniority in the interse seniority list of Line Inspectors of Nizamabad Circle to effect promotion of the petitioner to the post of Senior Line Inspector and further promotions.

The case of the petitioner is that he was initially appointed as Helper and he was promoted to the post of Telephone Line Inspector on 08.09.1988 and that initially his name was included in the seniority list initially which has been not considered in the promotion, hence, this Writ Petition.

In the counter affidavit filed by the respondents it is not denied the appointment of the petitioner as Helper, and his promotion as Telephone Inspector on 08.09.1988. It is stated that the petitioner has given an option form to the effect that he will not appeal to integrate his seniority with the Line Inspectors or Foreman I from the cadre of Telephone Inspectors which is an isolated post as per the instructions contained in the Board's memo No.MPS/DM.I/A3/377/81-1 dated 26.05.1981. Having given such an option form by the petitioner, the petitioner gave a representation on 04.10.1993 for integration of his seniority with the seniority of Line Inspectors of Kamareddy Division as well as circle seniority as per his Seniority. According to them by the memo, dated 27.08.1996, instructions were issued to the Divisional Engineer Electrical Q&C Division, Kamareddy to include the name of the petitioner in the seniority list duly serving the notices to the concerned Line Inspectors as per rules. Pursuant to that two Line Inspectors have raised objections about the

inclusion of the name of the petitioner in the seniority list of Line Inspectors. Subsequently, the petitioner's claim has been negatived by a Memo No.CO/Adm./C2/P.No.6652/96 dated 24.06.1997 of the Superintending Engineer, O.P, hence, no merits in the Writ Petition.

Having considered the submissions made by the learned counsel on either side and on perusal of the material on record, the only question that falls for consideration is as to whether the petitioner is entitled to seek any promotion?

There is no dispute with regard to the appointment of the petitioner as Helper and ultimate promotion as Telephone Line Inspector. The claim of the petitioner for further promotion was sought to be denied mainly on the option form alleged to have been given by the petitioner on 08.09.1988, wherein he has stated that he would not make any such claim or challenge. Inadvertent to that there is no explanation forthcoming on behalf of the respondents herein as to how and on what circumstances such option form was obtained from the petitioner. Further no regulation or law has been shown on which the respondents obtained option form, which may affect the very fundamental rights of an individual. It cannot be said that there can be any such voluntary act on the part of the employee to give up any benefit where he is entitled to under law. Further previously having included the petitioner's name in the seniority list, the respondents sought to deny the same by order, dated 24.06.1997, only because of the objections raised by two Line Inspectors. Admittedly, the petitioner was not given any notice before passing any orders on 24.06.1997, nor petitioner was given any opportunity to explain with regard to the complaint made by those alleged two Line Inspectors. Especially where the petitioner has got substantial rights to be considered for promotion on the basis of seniority and inclusion of his name in the seniority list, the same cannot be set aside merely by one side orders without giving any proper opportunity to all the parties concerned. In view of the same, I do not find any justification in rejecting the petitioner's claim.

The Writ Petition is allowed accordingly. The proceedings dated 25.09.1996 issued in Memo No. DEE: O&C: KMR: ADM: E2: D.No.2568/96 is set aside and the respondents are directed to consider the petitioner's claim *vis a vis* the others after giving notice and opportunity to all the persons affected. The entire exercise shall be completed within one month from the date of receipt of a copy of this order.

kvrm 16-03-2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, The Chief Justice on this the Wednesday the Sixteenth day of March, two thousand and five.

To

1. The Superintending Engineer, Operation,

A.P. State Electricity Board, Nizamabad.
2. The Divisional Engineer, Electrical, A.P. State Electricity

Board, Operation Construction Division,
Kamareddy, Nizamabad.

3. 2 CD copies.